

(3) *Notice of appeal rights.* CMS gives the Part D plan sponsor written notice of its right to appeal the decision that the sponsor is not qualified to renew its contract in accordance with § 423.642(b).

§ 423.508 Modification or termination of contract by mutual consent.

(a) *General rule.* A contract may be modified or terminated at any time by written mutual consent.

(b) *Notification of termination.* If the contract is terminated by mutual consent, the Part D plan sponsor must provide notice to its Medicare enrollees and the general public as provided in paragraph (c) of this section.

(c) *Notification of modification.* If the contract is modified by mutual consent, the Part D plan sponsor must notify its Medicare enrollees of any changes that CMS determines are appropriate for notification within timeframes specified by CMS.

(d) *Timely transfer of data and files.* If a contract is terminated under paragraph (a) of this section, the Part D plan sponsor must ensure the timely transfer of any data or files.

§ 423.509 Termination of contract by CMS.

(a) *Termination by CMS.* CMS may terminate a contract for any of the following reasons if the Part D sponsor—

(1) Failed substantially to carry out the terms of its contract with CMS;

(2) Is carrying out its contract with CMS in a manner that is inconsistent with the effective and efficient implementation of this part;

(3) No longer meets the requirements of this part for being a contracting organization;

(4) There is credible evidence that the Part D sponsor committed or participated in false, fraudulent, or abusive activities affecting the Medicare program, including submission of false or fraudulent data;

(5) Experiences financial difficulties so severe that its ability to provide necessary prescription drug coverage is impaired to the point of posing an imminent and serious risk to the health of its enrollees, or otherwise fails to make services available to the extent that a risk to health exists;

(6) Substantially fails to comply with the requirements in subpart M of this part relating to grievances and appeals;

(7) Fails to provide CMS with valid risk adjustment, reinsurance and risk corridor related data as required under § 423.322 and § 423.329 (or, for fallback entities, fails to provide the information in § 423.871(f)).

(8) Substantially fails to comply with the service access requirements in § 423.120;

(9) Substantially fails to comply with the marketing requirements in § 423.128;

(10) Substantially fails to comply with the coordination with plans and programs that provide prescription drug coverage as described in subpart J of this part; or

(11) Substantially fails to comply with the cost and utilization management, quality improvement, medication therapy management and fraud, abuse and waste program requirements as specified in subparts D and K of this part.

(b) *Notice of termination.* If CMS decides to terminate a contract for reasons other than the grounds specified in paragraph (a)(4) or (a)(5) of this section, it gives notice of the termination as follows:

(1) *Termination of contract by CMS.* (i) CMS notifies the Part D plan in writing 90 days before the intended date of the termination.

(ii) The Part D plan sponsor notifies its Medicare enrollees of the termination by mail at least 30 days before the effective date of the termination.

(iii) The Part D plan sponsor notifies the general public of the termination at least 30 days before the effective date of the termination by publishing a notice in one or more newspapers of general circulation in each community or county located in the Part D plan sponsor's service area.

(iv) If a Part D plan sponsor's contract is terminated under paragraph (a) of this section, it must ensure the timely transfer of any data or files.

(2) *Immediate termination of contract by CMS.* (i) For terminations based on violations specified in paragraph (a)(4) or paragraph (a)(5) of this section, CMS notifies the Part D plan sponsor in writing that its contract is terminated

effective the date of the termination decision by CMS. If termination is effective in the middle of a month, CMS has the right to recover the prorated share of the prospective monthly payments made to the Part D sponsor covering the period of the month following the contract termination.

(ii) CMS notifies the Part D plan sponsor's Medicare enrollees in writing of CMS's decision to terminate the Part D plan sponsor's contract. This notice occurs no later than 30 days after CMS notifies the plan of its decision to terminate the Part D plan sponsor's contract. CMS simultaneously informs the Medicare enrollees of alternative options for obtaining qualified prescription drug coverage, including alternative PDP sponsors and MA-PDs in a similar geographic area.

(iii) CMS notifies the general public of the termination no later than 30 days after notifying the plan of CMS's decision to terminate the Part D plan sponsor's contract. This notice is published in one or more newspapers of general circulation in each community or county located in the Part D plan sponsor's service area.

(c) *Corrective action plan*—(1) *General rule.* Before terminating a contract for reasons other than the grounds specified in paragraph (a)(4) or (a)(5) of this section, CMS provides the Part D plan sponsor with reasonable opportunity to develop and receive CMS approval of a corrective action plan to correct the deficiencies that are the basis of the proposed termination.

(2) *Exception.* If a contract is terminated under paragraph (a)(4) or (a)(5) of this section, the Part D plan sponsor does not have the opportunity to submit a corrective action plan.

(d) *Appeal rights.* If CMS decides to terminate a contract, it sends written notice to the Part D plan sponsor informing it of its termination appeal rights in accordance with § 423.642.

§ 423.510 Termination of contract by the Part D sponsor.

(a) *Cause for termination.* The Part D plan sponsor may terminate its contract if CMS fails to substantially carry out the terms of the contract.

(b) *Notice of termination.* The Part D plan sponsor must give advance notice as follows:

(1) To CMS, at least 90 days before the intended date of termination. This notice must specify the reasons why the Part D sponsor is requesting contract termination.

(2) To its Medicare enrollees, at least 60 days before the termination effective date. This notice must include a written description of alternatives available for obtaining qualified prescription drug coverage within the services area, including alternative PDPs, MA-PDPs, and original Medicare and must receive CMS approval.

(3) To the general public, at least 60 days before the termination effective date by publishing a CMS-approved notice in one or more newspapers of general circulation in each community or county located in the Part D plan sponsor's geographic area.

(c) *Effective date of termination.* The effective date of the termination is determined by CMS and is at least 90 days after the date CMS receives the Part D plan sponsor's notice of intent to terminate.

(d) *CMS's liability.* CMS's liability for payment to the Part D plan sponsor ends as of the first day of the month after the last month for which the contract is in effect.

(e) *Effect of termination by the organization.* CMS does not enter into an agreement with an organization that has terminated its contract within the preceding 2 years unless there are circumstances that warrant special consideration, as determined by CMS.

(f) *Timely transfer of data and files.* If a contract is terminated under paragraph (a) of this section, the Part D plan sponsor must ensure the timely transfer of any data or files.

§ 423.512 Minimum enrollment requirements.

(a) *Basic rule.* Except as provided in paragraph (b) of this section, CMS does not enter into a contract under this subpart unless the organization meets the following minimum enrollment requirement: